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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,673	03/23/2005	Tatsuo Hoshino	K21409USWO C0384350/18565	2412
7590 08/27/2008				
Stephen M Haracz Bryan Cave 1290 Avenue of the Americas New York, NY 10104			EXAMINER RAGHU, GANAPATHIRAM	
			ART UNIT 1652	PAPER NUMBER
			MAIL DATE 08/27/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/528,673	Applicant(s) HOSHINO ET AL.
Examiner GANAPATHIRAMA RAGHU	Art Unit 1652

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 August 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1,2,6-8,13 and 16.

Claim(s) withdrawn from consideration: 3,4,9-12,14,15,17 and 18.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/GR/

/Rebecca E. Prouty/
Primary Examiner, Art Unit 1652

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: Rejection of claims 1, 2, 6-8, 13 and 16 for New-matter rejection is maintained. Applicants' arguments are considered, but they are found to be non-persuasive because neither the original claims or the amended claims or the specification as written demonstrates: 1) one step in vitro reaction wherein addition of an isolated polypeptide having the SEQ ID NO: 2 is able to directly catalyze/convert substrates such as L-gulose, L-galactose, L-idose and L-talose to L-ascorbic acid; 2) examiner continues to hold the position that L-ascorbic acid is produced only under in vivo conditions wherein a specific strain of E.coli has been transformed with an expression vector comprising a nucleic acid sequence that encodes the polypeptide of SEQ ID NO: 2 i.e., E.coli cellular context possibly providing other enzymes that enable the conversion of substrates such as L-gulose, L-galactose, L-idose and L-talose to intermediates/precursors which are subsequently acted upon by the polypeptide having the SEQ ID NO: 2 to form L-ascorbic acid. Furthermore, the arguments put forth by the applicants that in Example 1, control bacteria i.e., bacteria that are not transformed with the expression vector comprising a nucleic acid sequence that encodes the polypeptide of SEQ ID NO: 2 when provided with the substrates such as L-gulose, L-galactose, L-idose and L-talose do not produce L-ascorbic acid, does not conclusively prove that the polypeptide comprising the amino acid sequence of SEQ ID NO: 2 can directly catalyze/convert substrates such as L-gulose, L-galactose, L-idose and L-talose to L-ascorbic acid as the untransformed microorganism could simply be missing the one necessary enzyme of a multistep pathway but comprise all other enzymes. The only way to prove the point in contention is the demonstration of one step in vitro reaction wherein addition of an isolated polypeptide having the SEQ ID NO: 2 is able to directly catalyze/convert substrates such as L-gulose, L-galactose, L-idose and L-talose to L-ascorbic acid.

Previous rejection of claims 1, 2, 6, 7 and 13 under 35 U.S.C. 112, second paragraph is being withdrawn due to amendments to the claims.

Previous rejection of claims 1, 2, 6-8, 13 and 16 rejected under 35 U.S.C 112, first paragraph is being withdrawn due to amendments to the claims.

Previous rejection of claims 2, 8, 13 and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Sugisawa et al., (1995) is being withdrawn due to persuasive arguments by the applicants.